IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s):	Robert T. BAUM et al.
Title:	SECURITY EXTENSIONS USING AT LEAST A PORTION OF LAYER 2 INFORMATION OR BITS IN THE PLACE OF LAYER 2 INFORMATION
Appl. No.:	09/910,429
Filing Date:	July 20, 2001
Examiner:	M. Pyzocha
Art Unit:	2137
Conf. No.	2654

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection in the above-identified application. No amendments being field with this request.

This request is being filed with a notice of appeal. The review is requested for the reason(s) stated in the attached Remarks.

Respectfully submitted,

November 17, 2005

Joseph R. Palmieri
Reg. No. 40,760

Verizon Corporate Services Group Inc.
600 Hidden Ridge Drive
Mail Code: HQE03H14
Irving, Texas 75038
(972) 718-4800

Appn. Ser. No. 09/910,429

Atty Docket No.: 00-VE23.28
Customer No.: 32127

REMARKS ON SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant submits this Pre-Appeal Brief Request for Review in response to the Final Office Action mailed August 23, 2005 (Paper 20050816), and in conjunction with a Notice of Appeal in the present application.

In the Final Office Action, the Examiner has rejected claims 1-4, 6, 14-16, and 33-37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,988,497 to Wallace ("Wallace") in view of a web site posting titled "Data Link Layer" ("DLL Posting"), and further in view of U.S. Patent No. 5,638,448 to Nguyen ("Nguyen"). The Examiner has also rejected claims 5, 7-13 and 17-24, 26-32 and 38 under 35 U.S.C. § 103(a) as unpatentable over Wallace, the DLL Posting, Nguyen and further in view of U.S. Patent No. 5,880,446 to Mori et al. ("Mori"). Applicant respectfully requests review of these rejections, as the Examiner has not met the burden of showing, among other things, (a) that each and every element of the claims is taught or suggested by the cited prior art references, either individually or in combination, or (b) that there is a motivation to combine the cited references to produce the claimed inventions.[1]

Claims 1, 17, 24, 28 and 33 are the pending independent claims. Claims 1 and 17 each recite a method, and claim 33 recites an apparatus, "in which packets entering the network have at least a part of layer 2 header information replaced with a unique bit string." Claims 24 and 28 each recite a method in which packets entering the network have a unique bit string applied to layer 2 header information, "wherein the unique bit string uniquely identifies the party and an ingress location of the network." Although each of claims 1, 17, 24, 28 and 33 is of differing scope and includes additional elements, Applicant focuses on these elements for purposes of this Request.

[1] Applicant's silence as to assertions by the Examiner in the Final Office Action or certain requirements that may be applicable to rejections therein (e.g., whether a reference constitutes prior art, motivation to combine references) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

Applicant has previously set forth descriptions of various aspects of Wallace, the DLL Posting and Mori in previous papers (e.g., Paper No. __, Amendment dated August 4, 2005, pages 8-9 (hereinafter "Amendment of August 2005").) Nguyen (newly cited by the Examiner) describes a network that uses various levels of security for different portions of packets that are transferred over the network. (Nguyen, col. 1, l. 66 to col. 2, line 8.) At one level of security, a packet header and packet data may be encrypted, and the header changed to include the CRC values for each. (Id., col. 10, ll. 46-52; Fig. 4B.) The Examiner has relied on Nguyen to teach "authentication information in the header." (Final Office Action, p. 3.)

The Examiner contends in the Final Office Action that the combination of Wallace, the DLL Posting and Nguyen teach or suggest every element of claims 1, 17 and 33. (Final Office Action, p. 2-3, 6-7.) However, Applicant notes that:

- the Examiner admits that "Wallace fails to disclose the bit string replacing part of the layer 2 (data link layer) information" (Final Office Action, p. 3.);
- the Examiner cites the DLL Posting as merely teaching "the data link layer" (Id.);
- the Examiner cites Nguyen as merely teaching "authentication information in the header." (Id.)

Assuming that the Examiner's contentions are correct (which Applicant does not concede), the Examiner has not demonstrated that every element of claims 1, 17 and 33 are present in the cited references, even if combined as asserted by the Examiner, because none of the references teaches or suggests packets where at least a portion of layer 2 header information has been replaced with a unique bit string. Applicant has noted this deficiency in its previous Amendment (e.g., see Amendment of August 2005, pages 10-11), and the Examiner's additional citation of Nguyen in the Final Office Action does not cure this deficiency.

The Examiner contends in the Final Office Action that the combination of Wallace, the DLL Posting, Nguyen and Mori teach or suggest every element of claims 24 and 28. (Final Office Action, p. 5-6.) Similarly to the discussion above with respect to claims 1, 17 and 33, even if it is assumed that the Examiner's factual contentions are correct with respect to the contents of the cited references (which Applicant does not concede), the Examiner has not demonstrated that

every element of claims 24 and 28 are present in the cited references when combined, or that one skilled in the art would be motivated to combine the references as asserted by the Examiner.

For example, the Examiner admits that the "modified Wallace, DLL and Nguyen system fails to disclose the unique bit string uniquely identifies the party and an ingress location of the network." (Final Office Action, p. 5.) To overcome this deficiency, the Examiner cites Mori, stating that Mori "teaches such information" (Final Office Action, p. 5), and asserts that the motivation to combine these references "would have been to include information about the buyer in the transaction." (Id., p. 6.) Assuming for the sake of this argument that such a motivation is accurate (which Applicant does not concede), the Examiner does not indicate why such a motivation to combine these references would result in a system that uses packets where a unique bit string is applied to layer 2 header information, wherein the unique bit string uniquely identifies the party and an ingress location of the network. As noted by Applicant in its earlier submissions (e.g., Amendment of August 2005, p. 9), Mori does not mention packets, layer 2 information, applying a unique bit string to layer 2 header information, or using such a unique bit string to uniquely identify the party and an ingress location of the network. Thus, the Examiner has not set forth a motivation for one skilled in the art to combine the four cited references to create a modified system that includes all the elements of the pending claims. Applicant notes that the mere possibility that references can be combined is not enough to establish a prima facie case of obviousness, rather, a teaching, suggestion or motivation to combine references to create the claimed invention must be demonstrated. (See, e.g., MPEP § 2143.01.)

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CONCLUSION

In view of the foregoing, Applicant respectfully submits that the pending claims are in condition for allowance. Reconsideration and allowance are respectfully requested.

Respectfully submitted,

November 17, 2005

Joseph R. Palmieri
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600 Hidden Ridge Drive
Mail Code: HQE03H14
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(972) 718-4800